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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 328

MARTIN E. SEGAL and LEON KARCHMER,

Petitioners,

v.

JAMES MORRISSEY, JOSEPH PADILLA, RALPH IBRAHIM, individually and on behalf of the members of the National Maritime Union of America,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THIS PETITION FOR A WRIT OF CERTIORARI

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Statement

The respondents James M. Morrissey, Joseph Padilla and Ralph Ibrahim, individually and in their representative capacities, respectfully pray that this Court shall deny the petition of Martin E. Segal and Leon Karchmer, heretofore filed herein to review the interlocutory judgment of the United States Court of Appeals for the Second Circuit entered on February 20, 1970 in this matter.

Prior Denial

This Court, by order made on June 29, 1970, has already denied a petition for a writ of certiorari filed herein (October Term, 1969, No. 1618). There are no substantial questions raised in this petition that were not presented on the first petition.

Reference is made to respondents' brief dated June 15, 1970, for a proper statement of the previous proceedings, the questions actually presented and the respondents' statement of the case.

Reasons for Denying this Writ

I. The present petition gives no new reasons of substance why certiorari should be granted.

This petition raises substantially the same questions that were disposed of by this Court when the first petition herein was denied on June 29, 1970. Courts may test the reasonableness of an interpretation placed by union officials on the union's constitution.

II. Summary judgment should be granted when there are no issues of material fact.

Defendants moved below for summary judgment. In so doing, they recognized and represented that there were no material issues of fact for the Court to determine. Plaintiffs cross-moved for summary judgment. Defendants then attempted to create factual issues which were non-existent.

The Court denied the defendants' motion and granted plaintiffs' motion for summary judgment. The United States Court of Appeals for the Second Circuit reviewed the record and held that the District Court was correct in its finding that there were no factual issues.

III. The defendant Segal appeared, participated in the proceeding, and was fully heard in all courts below.

The defendant Segal filed an affidavit in support of defendants' motion to reargue the denial of their motion for summary judgement, and the granting of plaintiffs' motion for summary judgment. In so doing, he participated in the proceedings; he had a full opportunity to present; and, in fact, did present whatever evidence or argument he wished.

IV. The trustees, with respect to funds entrusted to them, are subject to the same fiduciary duties as are the officers.

The trustees have been entrusted with union funds. As such custodians, they are "agents" of the union and "occupy positions of trust in relation to such organization and its members as a group" [29 U.S.C. § 402 (q) and 501 (a)]. Their duties and responsibilities under the Labor-Management Reporting and Disclosure Procedure Act (29 U.S.C. Chapter 11), with respect to funds in their care, are the same as the duties and responsibilities of officers and other agents and representatives of the union. (*Tucker* v. *Shaw*, 378 F. 2d 304, 308) (2d Cir. 1967).

If such trustees may not be held to account, then the objects and purposes of the Act will be frustrated. The trustees, with custody of the fund, may be the only financially responsible source of recoupment.

V. The Court of Appeals complied with the Federal Rules of Appellate Procedure.

On March 31, 1970, the Second Circuit denied both the petition for rehearing and the petition for rehearing *en banc* by the entry of two separate orders (Appendix H,

43a; Appendix I, 44a). These two applications were made together under one cover. Judge Danaher voted on the one. He had an opportunity to vote on the other had he so desired. He abstained, obviously feeling that the question was not of sufficient importance to warrant a rehearing *en banc*. "Such a hearing or rehearing is not favored" [Rules of Appellate Procedure 35(a)].

No Judge who was a member of the panel that rendered the decision requested a vote on the question.

Conclusion

This Court has already denied certiorari herein on June 29, 1970.

This petition raises no issues justifying the attention of this Court.

This petition should be denied.

Dated: New York, New York, July 8, 1970.

Respectfully submitted,

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